



Mack H. Shumate, Jr.
Senior General Attorney, Law Department

February 25, 2010 226517
~~October 25, 2010~~

VIA E-FILING

ENTERED
Office of Proceedings

FEB 25 2010

Part of
Public Record

The Honorable Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, S.W., Room #100
Washington, DC 20423-0001

RE: Abandonment Exemption -- from M.P. 540.3 west of Downes to M.P. 552.7 west of Portis, a distance of 12.4 miles in Osborne and Smith Counties, Kansas; STB Docket No. AB-33 (Sub-No. 270X)

Dear Ms. Brown:

Union Pacific Railroad Company ("Union Pacific") has received a Petition for Issuance of a Notice of Interim Trail Use from Sunflower Recreational Trails, Inc. ("SRT") dated February 9, 2010. SRT is requesting a 180-day period in which to negotiate for the acquisition under the provisions 16 U.S.C. §1247(d) and 49 C.F.R. § 1152.29 regarding that portion of the Union Pacific's right-of-way from Milepost 540.3 west of Downes to Milepost 552.7 west of Portis, a distance of 12.4 miles in Osborne and Smith Counties, Kansas.

The Union Pacific is willing to negotiating with SRT concerning the acquisition of the subject property for trail use and supports their request for 180-days in which to negotiate. A copy of the SRT's Petition is attached hereto as Exhibit "A" and hereby made a part hereof.

Sincerely yours,

Attachment

cc: Sunflower Recreational Trails, Inc.

o:\abandonments\33-270X\SRT-RequestToNegotiate.doc

LAW OFFICE
THOMAS F. MCFARLAND, PC.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1112
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

226447

THOMAS F. MCFARLAND

February 9, 2010

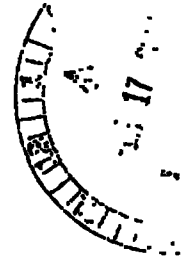
By UPS overnight mail

Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

ENTERED
Office of Proceedings

FEB 17 2010

Part of
Public Record



Re: Docket No. AB-33 (Sub-No. 270X), *Union Pacific Railroad Company -- Abandonment Exemption -- in Osborne and Smith Counties, KS*

Dear Section of Administration Chief:

Enclosed please find an original and 10 copies of Petition For Issuance Of A Notice Of Interim Trail Use, for filing with the Board in the above referenced matter.

Also enclosed is a check in the amount of \$250 for the filing fee.

FEE RECEIVED
FEB 17 2010
SURFACE
TRANSPORTATION BOARD

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for Petitioner

TMcf kl enc:wp8 01/421\ab33 270x\1rstb1

FILED
FEB 17 2010
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

226 447

UNION PACIFIC RAILROAD
COMPANY – ABANDONMENT
EXEMPTION – IN OSBORNE AND
SMITH COUNTIES, KS

)
) DOCKET NO. AB-33
) (SUB-NO. 270X)
)

PETITION FOR ISSUANCE OF A
NOTICE OF INTERIM TRAIL USE

FILED

FEB 17 2010

SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
FEB 17 2010
SURFACE
TRANSPORTATION BOARD

SUNFLOWER RECREATIONAL TRAILS, INC.
LARRY ROSS, President
P.O. Box 3863
Topeka, KS 66604-6863

Petitioner

ENTERED
Office of Proceedings

FEB 17 2010

Pen of
Public Record

By: THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204
(312) 201-9695 (fax)
mcfarland@aol.com

Attorney for Petitioner

DATE FILED: February 10, 2010

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

UNION PACIFIC RAILROAD)	
COMPANY -- ABANDONMENT)	DOCKET NO. AB-33
EXEMPTION -- IN OSBORNE AND)	(SUB-NO. 270X)
SMITH COUNTIES, KS)	

**PETITION FOR ISSUANCE OF A
NOTICE OF INTERIM TRAIL USE**

Pursuant to 49 C.F.R. § 1152.29(a), **SUNFLOWER RECREATIONAL TRAILS, INC.** (SRT), a qualified private organization, hereby respectfully petitions for issuance of a Notice of Interim Trail Use (NITU) providing for a 180-day period for SRT to negotiate with **UNION PACIFIC RAILROAD COMPANY (UP)** for railbanking and interim recreational trail use of the right-of-way between Milepost 540.3 west of Downs and Milepost 552.7 west of Portis, a distance of 12.4 miles in Osborne and Smith Counties, Kansas (Downs-Portis line).

An exemption for abandonment of the Downs-Portis line became effective on August 27, 2008, but UP has not consummated the abandonment, nor completed removal of track materials from the line. In a decision served December 30, 2009, the Board granted UP's request to extend the deadline for consummation of the abandonment to June 1, 2010.

The following are included in a Statement of Willingness to Assume Financial Responsibility, attached to this Petition as Appendix 1:

- (1) a map depicting the right-of-way proposed to be acquired;
- (2) a statement of SRT's willingness to assume responsibility for (a) managing the right-of-way; (b) any legal liability arising out of use of the right-of-way; and

- (c) payment of all taxes assessed against the right-of-way; and
- (3) an acknowledgment that interim trail use is subject to the user's continuing to meet its responsibilities identified above, and to possible reconstruction and reactivation of the right-of-way for rail service.

WHEREFORE, if UP agreeable to negotiate, the Board should issue the requested NITU.

Respectfully submitted,

SUNFLOWER RECREATIONAL TRAILS, INC.
LARRY ROSS, President
P.O. Box 3863
Topeka, KS 66604-6863

Petitioner

Thomas F. McFarland

By: THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204
(312) 201-9695 (fax)
mcfarland@aol.com

Attorney for Petitioner

DATE FILED: February 10, 2010

APPENDIX 1

**Statement of Willingness
To Assume Financial Responsibility**

In order to establish interim trail use and rail banking under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1142.29, Sunflower Recreational Trails, Inc. (SRT), is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned by Union Pacific Railroad Company (UP). The property extends between railroad Milepost No. 540.3 west of Downs and Milepost No. 552.7 west of Portis, a distance of 12.4 miles in Osborne and Smith Counties, Kansas. An exemption for abandonment of that line became effective on August 27, 2008, but UP has not consummated that abandonment.

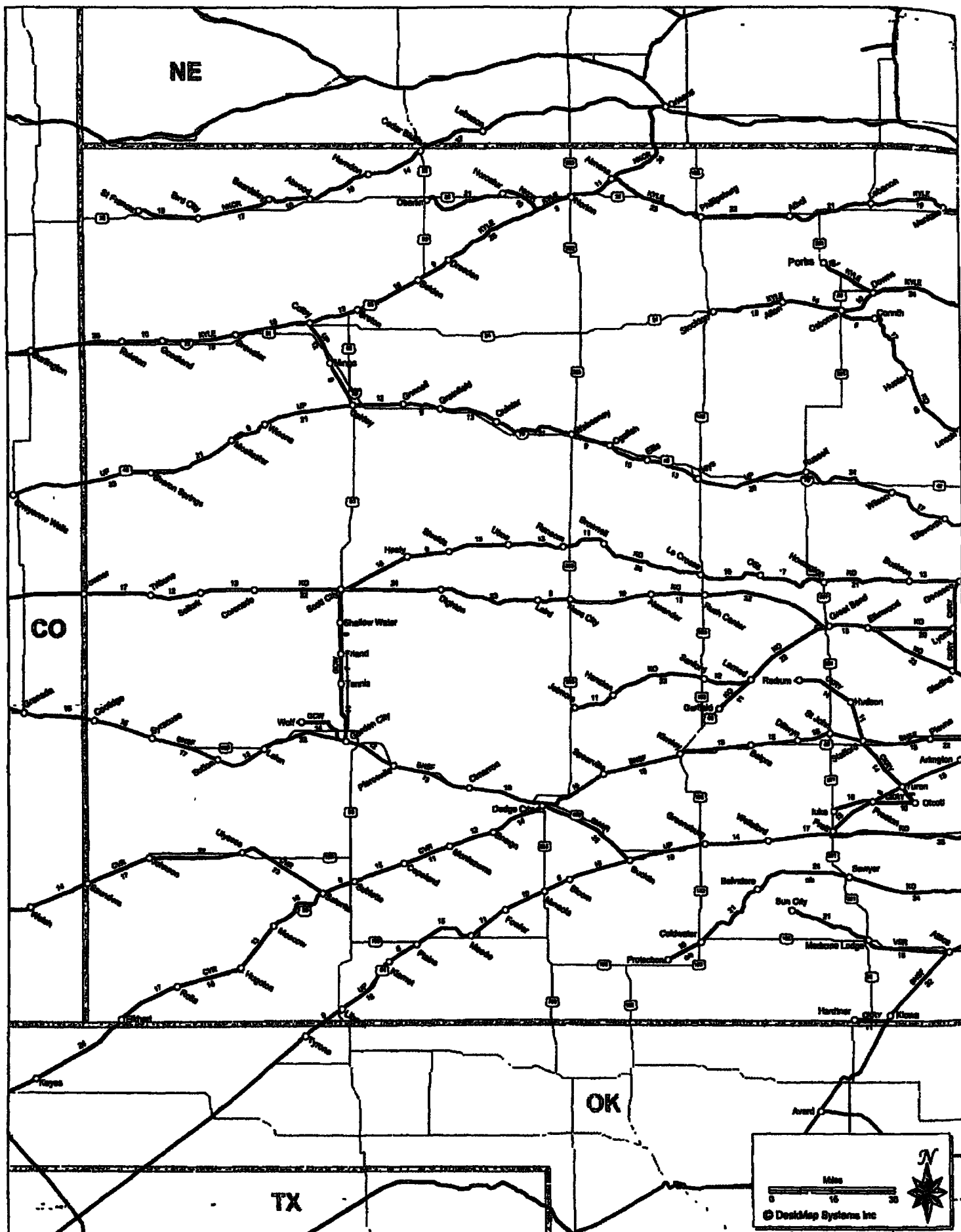
A map of the property depicting the right-of-way is attached.

SRT acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on the railroad on the same date it is being served on the Board.



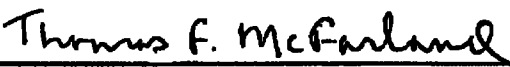
Thomas F. McFarland
Attorney for Petitioner

KANSAS



CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2010, I served the foregoing document, Petition For Issuance Of A Notice Of Interim Trail Use, on Mack H. Shumate, Esq., Senior General Attorney, Union Pacific Railroad Company, 101 N. Wacker Dr., Suite 1920, Chicago, IL 60606-1718, mackshumate@up.com, by e-mail and first-class, U.S. mail, postage prepaid.


Thomas F. McFarland